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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORDER

KEVIN LEE KENNEDY,

Plaintiff,

vs.

DAN WATTS, et al.,

Defendants.

Case No. 3:17-cv-00468-MMD-CBC

**DEFENDANTS DZURENDA AND GITTERE'S
MOTION FOR ENLARGEMENT OF TIME TO
MOVE FOR SUMMARY JUDGMENT
(Second Request)**

Defendants, James Dzurenda and William Gittere, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, and Gerri Lynn Hardcastle, Deputy Attorney General, hereby move this Honorable Court for an enlargement of time to move for summary judgment

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS AND RELEVANT PROCEDURAL HISTORY

This case is a *pro se* civil rights action pursuant to 42 U.S.C. § 1983. ECF No. 21 at 1. Plaintiff, Kevin Kennedy (Plaintiff), is an inmate who is currently incarcerated at Ely State Prison (ESP). *Id.* In his First Amended Complaint (FAC), Plaintiff alleges, among other claims, that Defendants James Dzurenda and William Gittere (the NDOC Defendants) violated his Fourteenth Amendment right to due process by housing him in administrative segregation for over five months without giving him notice or an opportunity to be heard. ECF No. 24 at 15.

On July 3, 2019, the NDOC Defendants filed their Motion for Enlargement of Time to Move for Summary Judgment (First Request). ECF No. 83. The NDOC Defendants explained that due to short-

1 staffing in the Bureau of Litigation, counsel's workload had dramatically increased and she was unable
 2 to complete her clients' motion for summary judgment (MSJ) by the deadline in the Scheduling Order.
 3 *Id.* at 2. Defendants and their counsel therefore requested an additional two (2) weeks, or up to and
 4 including Wednesday, July 17, 2019, to file their MSJ. *Id.* This Court graciously granted that request.
 5 ECF No. 85.

6 Unfortunately, counsel's request of two (2) weeks was overly optimistic and ambitious.
 7 Moreover, counsel is currently in the process of preparing for an upcoming jury trial before the United
 8 States District Court (*see Gruber v. Gedney, et al.*, Case No. 3:15-cv-00543-RCJ-CBC, ECF No. 134),
 9 and drafting an answering brief to submit to the Ninth Circuit (*see Friedman v. Woods, et al.*, Case No.
 10 19-16136, DktEntry 2-1). Accordingly, Defendants and their counsel respectfully request this
 11 Honorable Court allow them up to and including Friday, August 16, 2019, to file their MSJ.

12 **II. DISCUSSION**

13 **A. Fed. R. Civ. P. 6(b)(1) allows this Court to extend deadlines.**

14 District courts have inherent power to control their dockets. *Hamilton Copper & Steel Corp. v.*
 15 *Primary Steel, Inc.*, 898 F.2d 1428, 1429 (9th Cir. 1990); *Oliva v. Sullivan*, 958 F.2d 272, 273 (9th Cir.
 16 1992). Fed. R. Civ. P. 6(b)(1) governs enlargements of time and provides as follows:

17 When an act may or must be done within a specified time, the court may,
 18 for good cause, extend the time: (A) with or without motion or notice if
 19 the court acts, or if a request is made, before the original time or its
 extension expires; or (B) on motion made after the time has expired if the
 party failed to act because of excusable neglect.

20 "The proper procedure, when additional time for any purpose is needed, is to present to the
 21 Court a timely request for an extension before the time fixed has expired (*i.e.*, a request presented
 22 before the time then fixed for the purpose in question has expired)." *Canup v. Miss. Valley Barge Line*
 23 *Co.*, 31 F.R.D. 282, 283 (D.Pa. 1962). The *Canup* Court explained that "the practicalities of life" (such
 24 as an attorney's "conflicting professional engagements" or personal commitments such as vacations,
 25 family activities, illnesses, or death) often necessitate an enlargement of time to comply with a court
 26 deadline. *Id.* Extensions of time "usually are granted upon a showing of good cause, if timely made."
 27 *Creedon v. Taubman*, 8 F.R.D. 268, 269 (D.Ohio 1947). The good cause standard considers a party's

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1 diligence in seeking the continuance or extension. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
2 604, 609 (9th Cir. 1992).

3 **B. Good cause exists to enlarge the time for Defendants to respond.**

4 Here, the NDOC Defendants are making a second request for additional time to move for
5 summary judgment in advance of the deadline to do so. Therefore, they must demonstrate good cause
6 for the requested enlargement. As stated, they additional time to file their MSJ, because short-staffing
7 in this Bureau of Litigation at the Office of the Attorney General has dramatically increased counsel's
8 current workload. They also need additional time, because their counsel is currently preparing for a
9 jury trial and drafting an answering brief for the Ninth Circuit. Counsel believed she could complete
10 the MSJ with just two (2) additional weeks, but she was mistaken. Accordingly, the NDOC Defendants
11 and counsel seek up to and including Friday, August 16, 2019, to file their MSJ. The NDOC
12 Defendants seek this enlargement in good faith and not for the purpose of any unnecessary delay.
13 Lastly, the NDOC Defendants do not anticipate any unfair prejudice Plaintiff or the other defendants
14 who have appeared in this case.

15 **III. CONCLUSION**

16 Based on the foregoing, Defendants respectfully request that this Honorable Court grant their
17 Motion for Enlargement of Time (Second Request) and allow them up to and including Friday, August 16,
18 2019, to file their motion for summary judgment.


19 DATED this 17th day of July, 2019.

20 AARON D. FORD
21 Attorney General

22 By:


23 GERRI LYNN HARDCASTLE, Bar No. 13142
24 Deputy Attorney General

25 *Attorneys for Defendants*

26 **IT IS SO ORDERED**
27 
28 U.S. MAGISTRATE JUDGE

DATED: 7/31/2019